IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No.16387 of 2005
Date of Decision: 11.5.2007

Ram Kishan Vs. State of Haryana and others

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Present : Mr.Munish Jolly,Advocate for the petitioner.
Mr.Anil Rathee, Addl.A.G. Haryana.10.2001,
Mr.O.P. Sharda, Advocate

CORAM : HON'BLE MR.JUSTICE P. SATHASIVAM
HON'BLE MR.JUSTICE RAJIVE BHALLA

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1. Whether Reporters of Local Newspapers may be allowed to see the judgement ?
2. To be referred to the Reporters or not ?
3. Whether the judgement should be reported in the Digest ?

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RAJIVE BHALLA, J

Prayer in this petition is, for issuance of a writ in the nature of Certiorari for quashing the orders dated 31.10.2001 passed by the Divisional Canal Officer, order dated 2.8.2002 passed by the Superintendent Canal Officer and the order dated 19.5.2004 passed by the Chief Canal Officer.

The petitioner primarily contends that by sanction of water course `AB', his tubewell and kotha would be demolished. Taking into consideration the aforementioned plea, the following order was passed by this Court on 7.11.2006 :

" Counsel for the petitioner has argued that in case

watercourse `AB' is allowed to run then kotha and tubewell would be damaged as they would come in the way.

We have perused the site plan (Annexure P-2) and are prima-facie of the opinion that if the watercourse is sanctioned on the other end of `AB' which we mark as `XY' then not only the kotha and the tubewell can be saved from demolition but even irrigation of the land of respondent no.5 would not be effected.

Counsel for respondent no.5 prays for time to get instructions.

Adjourned to 8.2.2007."

The facts noticed herein above have not been denied by the respondents.

In view of the aforementioned, it is apparent that the impugned orders, sanctioning the watercourse `AB' were passed without due application of mind. The respondents failed to consider the petitioner's objection that the watercourse, if excavated, would lead to the demolition of his tubewell and kotha (small room). Faced with the aforementioned situation, counsel for the parties agree that the impugned orders be set aside and the matter be remitted to the Divisional Canal Officer, Rohtak, Water Services Division, Rohtak to frame a fresh scheme, with respect to the application filed by respondent no.5.

In view of what has been noticed herein above, the present petition is allowed and the orders dated 31.10.2001,2.8.2002 and 19.5.2004 are set aside. The matter is remitted to the Divisional Canal Officer, Rohtak Water Services Division, Rohtak, to consider the application, preferred by

respondent no.5, Sat Narain son of Ram Sarup resident of Village Dhanana, Tehsil Gohana, Distt.Sonepat, in accordance with law, afresh. It is made clear that the objections raised by the petitioner would be duly considered and adjudicated, before passing any orders for and against the claim raised by respondent no.5

The present petition stands disposed of accordingly.

(RAJIVE BHALLA)
JUDGE

11.5.2007
GS

(P. SATHASIVAM)
JUDGE